

IN THE COUNTY COURT, IN AND FOR LEON COUNTY, FLORIDA

MURRAY J. SHARKEY,

Plaintiff,

CASE NO. 04 CC 2090

vs.

BOCC LEON COUNTY DIVISION OF
ANIMAL CONTROL CLASSIFICATION
COMMITTEE,

Defendant.

LEON COUNTY'S MOTION TO DISMISS

COMES NOW, Leon County, on behalf of the Leon County Classification Committee (hereinafter "Defendant"), by and through its undersigned counsel, and hereby files its Motion to Dismiss, pursuant to Rule 1.140(b), Fla. R. Civ. P., and as grounds therefore states as follows:

Lack of Jurisdiction

1. Murray J. Sharkey (hereinafter "Plaintiff") filed a "Notice of Appeal" contesting the Leon County Classification Committee's determination of the Plaintiff's dog, "Sailor" as a dangerous dog. Plaintiff's Notice of Appeal was filed in the County court on March 24, 2004.

2. This Honorable Court is without jurisdiction to proceed with this action because Plaintiff failed to timely contest the Leon County Animal Classification Committee's decision which classified the Plaintiff's dog, "Sailor," as a "dangerous" animal. The Committee entered the "dangerous" classification on February 26, 2004 and

further ordered the disposition of "Permanent Confinement." (See Defendant's Composite Exhibit A-Disposition Order and Verified Return of Service).

3. Section 4-94(a), Leon County Code of Laws, provides, in pertinent part:

If the owner...of an animal classified as dangerous or aggressive disputes the order of the Classification Committee, he or she may within ten (10) business days following the date of receipt of the order apply to a court of competent jurisdiction for any remedies which may be available. A copy of the action seeking relief shall be served upon the county...

4. The Plaintiff received the Committee's Disposition Order on March 4, 2004, via process server. (See Defendant's Composite Exhibit A). Accordingly, Plaintiff's Notice of Appeal should have been served on Leon County and filed with the court on or before March 18, 2004 as required by law. Therefore, Plaintiff's Notice of Appeal should be dismissed as untimely.

5. Moreover, the Final Disposition Order clearly notified the Plaintiff that

If no legal action has been served upon the County within the time period specified above,...the owner or keeper of such animal shall be deemed to have waived his or her right to protest such classification order to permanently confine or to destroy the animal. In such case, the Division of Animal Control shall proceed with the disposition of the animal.

As such, Plaintiff's Notice of Appeal is time-barred, and he has waived his right to protest the classification of his dog, "Sailor" as "dangerous."

6. During the entirety of Leon County's Animal Control investigation, and the time set for public hearings in this matter, Leon County consistently notified the Plaintiff that his dog had been declared "dangerous" during a Pre-determination hearing. Said notice of Pre-determination was posted and hand-delivered to the Plaintiff on January 30,

2004 and February 8, 2004, respectively. (See Defendant's Composite Exhibits C & D). However, the Plaintiff never responded to such notices, nor did he attend any of the publicly-noticed hearings to speak or protest the classification.

Improper Party

7. Further, since it is not an entity subject to suit, Florida law does not allow the Leon County Division of Animal Control to be sued. Under Section 125.15, Florida Statutes, counties, not their internal governmental functions, have the power to sue and be sued. Here, the Plaintiff has improperly sued the Leon County Division of Animal Control which does not have the capacity to be sued. See Florida City Police Department v. Corcoran, 661 So.2d 409 (Fla. 3rd DCA 1995), citing Eddy v. City of Miami, 715 F.Supp. 1553, 1556 (S. D. Fla. 1989); *see also* Dean v. Barber, 951 F. 2d 1210, 1214-15 (11th Cir. 1992).

WHEREFORE, Leon County, Florida, respectfully requests this Honorable Court to grant its Motion to Dismiss with prejudice for lack of jurisdiction and because the Plaintiff's Notice of Appeal fails to join Leon County as a proper defendant.

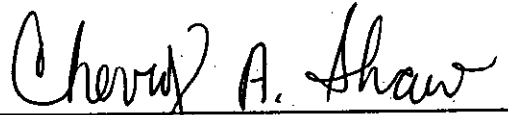
Respectfully submitted on this, 26th day of March, 2004.

OFFICE OF THE COUNTY ATTORNEY
LEON COUNTY, FLORIDA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States First Class Mail to MURRAY SHARKEY, 3355 Argonaut Drive, Tallahassee, FL 32312 and RICHARD ZIEGLER, LEON COUNTY ANIMAL CONTROL, 501-B Appleyard Drive, Tallahassee, FL 32301 on this, the 26th day of March 2004.



Cherry A. Shaw, Esquire
Assistant County Attorney